

APR 2 1977

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1171

JAMES Y. CARTER, Public Vehicle License
Commissioner of the City of Chicago,

Petitioner,

vs.

LUTHER MILLER, on his own behalf and on
behalf of all others similarly situated,

Respondent.

**REPLY OF PETITIONER TO BRIEF
IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

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The suggestion of Respondent that the case was not decided by the Court of Appeals on equal protection grounds is incorrect. The Court specifically declared that its decision rested upon equal protection grounds and not upon due

process considerations: "Accordingly, insofar as Ch. 28.1-3 and 28.1-10 discriminate irrationally among the class of ex-offenders, they violate the equal protection clause of the Fourteenth Amendment." (Pet. App. B., p. 6a) In its concluding paragraph the Court re-iterated its reliance upon an equal protection rationale: "Inasmuch as our equal protection holding decides the case, it is unnecessary to reach the more difficult due process question." (Pet. App. B., p. 11a)

Moreover, the Court's statements make it entirely clear that this case was not determined by an application of the reasoning previously applied in *Freitag v. Carter*, 489 F.2d 1377 (7th Cir. 1973). In discussing the instant case the Court made reference to the hearing which it acknowledged was available to Respondent under the *Freitag* decision and concluded that such a hearing would be of no aid to Respondent as a result of the substantive rule provided by Ch. 28.1-3. "Such a hearing on plaintiff, Luther Miller's application, however, would be a mere formality because of the prohibition in Ch. 28.1-3 against granting a license to one who has committed a crime involving the use of a deadly weapon." (Pet. App. B., p. 5a) For these reasons Respondent's suggestion that Petitioner is belatedly seeking review of the *Freitag* decision is wholly erroneous.

Finally, Respondent wrongly assumes, as did the Court of Appeals, that the relevant class involved is simply the class of "ex-offenders" and concludes that a denial of equal protection is established because some ex-offenders are accorded a hearing and others are not. The pattern of Petitioner's licensing procedure cannot reasonably be viewed in that simplistic perspective. It is essential to recognize that the relevant ordinances deal with two classes of persons:

those who are currently licensed and employed as cab drivers and those who are only applying for a license with the intention of seeking employment. With regard to those currently licensed the City Council has concluded that they have an interest warranting a due process hearing before revocation of their licenses and termination of their employment may be affected. However, new applicants for a license, because they do not have a career and current employment at stake, are not deemed to have the type of interest which requires such procedural treatment. It is submitted that viewed in this light the licensing procedure is rational and proper and does not result in a denial of equal protection.

CONCLUSION

For the foregoing reasons and for the reasons presented in Petitioner's original Petition a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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